



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: ANEFCO, Inc.
File: B-225502
Date: March 18, 1987

DIGEST

Protest against failure to include proposal in the competitive range is untimely and not for consideration when not filed within 10 days of protester's receipt of letter detailing specific basis for rejection of the proposal. In such circumstances, rejected offerors cannot wait for a debriefing before protesting because the basis for protest is already known.

DECISION

ANEFCO, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DE-RP04-86AL33569, issued by the Department of Energy (DOE), Albuquerque Operations Office, New Mexico.

We dismiss the protest as untimely.

The RFP, issued on April 7, 1986, solicited offers for casks used to store nuclear waste during transport. On August 20, following the submission of proposals, DOE requested that ANEFCO provide additional details and support for certain portions of its proposal. ANEFCO responded in great detail. By letter dated October 20, the Chairman of the Source Evaluation Panel, who was also the contracting officer, sent ANEFCO a 2-page letter rejecting the proposal from further consideration and detailing the reasons therefor. Subsequently, on November 7, a telephone conference was held between ANEFCO and the contracting officer. ANEFCO's protest was filed here on November 20.

ANEFCO characterizes the events following its receipt of the October 20 letter as follows:

" . . . upon receipt of the October 20th letter from the Contracting Officer, ANEFCO immediately

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requested a formal debriefing by DOE. This debriefing was held via a conference call on November 7, 1986. During the debriefing, the Contracting Officer indicated that DOE would reconsider its decision excluding ANEFCO from the competitive range and agreed to provide ANEFCO with an opportunity to provide additional information concerning its proposal When DOE failed to schedule a definitive follow-up meeting, ANEFCO grew concerned about whether DOE intended to live up to the commitments made during the course of the debriefing . . . [and] had no choice but to file a protest"


DOE contends that the protest was not filed within 10 working days of when the protest basis was known or should have been known. (4 C.F.R. § 21.2(a)(2) (1986)). According to DOE, ANEFCO did not request a debriefing; the telephone conference was informal in nature and did not constitute a formal debriefing, did not result in an agency protest, and did nothing to alter DOE's basis for rejecting ANEFCO's proposal.

Our timeliness rules require that a protest such as this be filed within 10 days of when the basis for protest is known or should be known. 4 C.F.R. § 21.2(a)(2) (1986). Offerors who are rejected from the competitive range usually are not provided detailed reasons for that action at the time they are furnished notice of rejection; for that reason, we have long recognized that the basis for protest in such cases will arise when the reasons are made known to the offeror, usually through a debriefing. See, e.g., Metropolitan Contract Services, Inc., B-191162, June 14, 1978, 78-1 CPD ¶ 435. Where, however, an offeror is provided the detailed basis for proposal rejection, a protest of the rejection must be filed within 10 days thereof, rather than 10 days after any subsequent debriefing. Singer Co., 56 Comp. Gen. 172 (1976), 76-2 CPD ¶ 481; Southwestern Bell Telephone Co. et al., B-200523.3 et al., March 5, 1982, 82-1 CPD ¶ 203; Compu-Serv, B-186164, May 9, 1977, 77-1 CPD ¶ 327.

In this case, the agency's October 20th letter not only informed ANEFCO of the rejection of its proposal, but also set forth several detailed bases for that rejection, and it is those bases that ANEFCO has sought to rebut in its protest. Under the circumstances, we see no reason why ANEFCO should have needed a debriefing, and therefore the timeliness of its protest must be measured from its receipt of the October 20th letter. Since it is clear that the protest was not filed until considerably later than 10 days after ANEFCO's receipt

of the letter, the protest is untimely. We therefore will not consider it.

The protest is dismissed.


Ronald Berger
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General Counsel